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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 293. 47.

WILLIAM L. POWERS, HATTIE DEAN, EDWARD DEANE, ET AL., PLAINTIFFS IN ERROR,

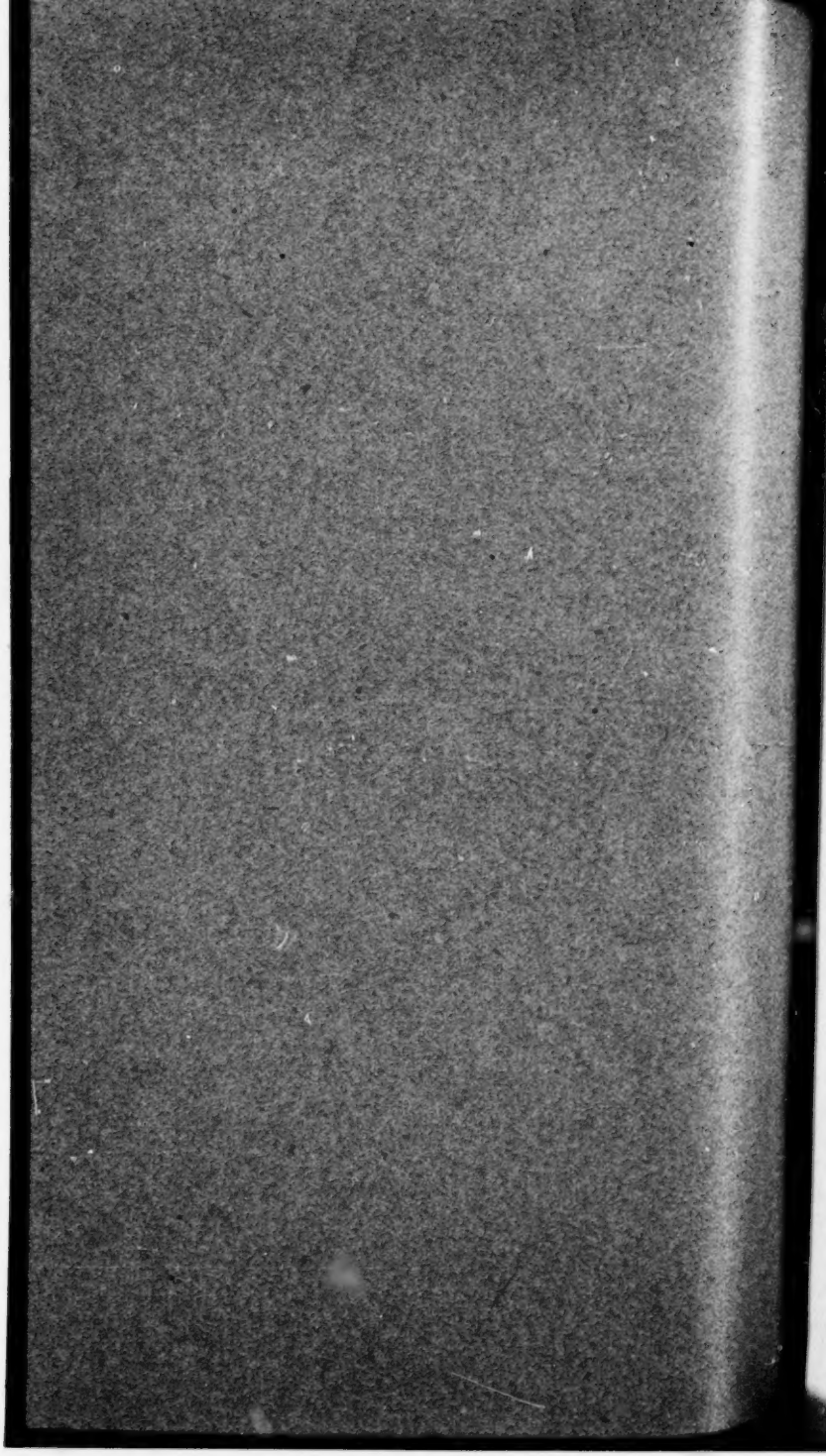
vs.

JACOB SLAGHT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED MAY 4, 1899.

(17,393.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 1, 1899.

1 In the Superior Court of the State of Washington for Whitman County.

WILLIAM L. POWERS, HATTIE DEAN, EDWARD Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company, a Corporation; Spokane & Palouse Land Company, a Corporation; Palouse Mill Company, a Corporation, and A. F. Pugh, Plaintiffs, *vs.* JACOB SLAGHT, Defendant.	Second Amended Complaint.

Plaintiffs, for second amended complaint and cause of action against said defendant, allege—

I.

That the Spokane & Palouse Railway Company is a corporation organized and existing under the laws of the Territory (now State) of Washington.

II.

That the Spokane and Palouse Land Company is a corporation organized and existing under the laws of the State of Washington.

III.

That the Palouse Mill Company is a corporation organized and existing under the laws of the State of Washington.

IV.

That by the act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route," and the various acts and joint resolutions of Congress supplemental thereto and amendatory thereof, Congress granted to the Northern Pacific Railroad Company lands as follows, to wit: "Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty
2 alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile, on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said

company in lieu thereof, under the direction of the Secretary of the Interior in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections."

By the sixth section of said act of July 2, 1864, Congress further provided as follows, to wit:

"And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be subject to sale, or entry or pre-emption before or after they are surveyed, except by said company as provided in this act."

V.

That the said Northern Pacific Railroad Company signified its acceptance of the terms, conditions, and impositions of said act of July 2, 1864, in writing, under the corporate seal of said company, executed pursuant to the direction of its board of directors, first had and obtained, and within two years of the passage of said act, to wit, December 29, 1864, served such acceptance upon the President of the United States.

VI.

That having surveyed the general route of that portion of
3 its railroad extending from Minnesota across the then Territories of Dakota, Montana, and Idaho, and across that portion of the Territory of Washington lying east of a point on the Columbia river near the mouth of the Snake river, it fixed said portion of the general route of its road by causing a map thereof, approved by the Secretary of the Interior, to be filed in the office of the Commissioner of the General Land Office; that said map of general route was so filed February 21, 1872; that the following described land, to wit, lots ten, eleven, fourteen, and fifteen, in section one, township sixteen north of range forty-five east, Willamette meridian, Washington, was situated coterminous with that portion of said general route located in the Territory of Washington and within forty miles thereof.

That March 30th, 1872, the Commissioner of the General Land Office transmitted to the register and receiver of the United States district land office at Walla Walla, Washington, that being the district in which the lands in eastern Washington, including the lands hereinbefore described, were situate, a diagram showing said line of general route so fixed, with limits embracing the lands coterminous therewith and within forty miles thereof indicated thereon, and directed the register and receiver of said district land office to withhold from sale or location, pre-emption or homestead entry, all the surveyed and unsurveyed odd-numbered sections of the public lands within the said limits; that said order of withdrawal and diagram were received at the said district land office April 22, 1872; that the land hereinbefore described was within the forty-mile limits as designated on said diagram, and was

within the terms of said order of withdrawal; that said land was at the date of the grant to said Northern Pacific Railroad Company, at the date when said map of general route was filed in the office of the Commissioner of the General Land Office, at the date of said order of withdrawal, and at the date when said order of
4 withdrawal and diagram were received at the United States district land office at Walla Walla, Washington, public lands to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and it was at all of said times free from pre-emption or other claims or rights, and said land was and is agricultural land.

Plaintiffs further allege that thereafter the said Northern Pacific Railroad Company caused the line of said railroad and telegraph extending from a point in township seven north of range thirty-one east, Willamette meridian, northeasterly to a point in section sixteen, township twenty-five north of range forty-three east of Willamette meridian, Washington, to be surveyed and definitely located, and on the 4th day of October, A. D. 1880, fixed the definite location of said portion of its railroad and telegraph line by causing a plat thereof, approved by the Secretary of the Interior, to be filed in the office of the Commissioner of the General Land Office; that the said land hereinbefore described was located coterminous with and more than forty but within fifty miles of said portion of said railroad and telegraph line thus definitely fixed; that on November 13, 1880, the Commissioner of the General Land Office transmitted to the register and receiver of the United States district land office at Colfax, Washington Territory, that being the district in which said land hereinbefore described were situate, a diagram showing the said line of railroad and telegraph so definitely fixed, with limits indicated thereon, including the lands coterminous with said line and within forty and fifty miles thereof, the first-named or forty-mile limits including the lands hereinafter designated as the place limits and the fifty-mile limits including the lands hereinafter designated as the indemnity limits, and directed the register and receiver of the said district land office to continue
5 the reservation of all lands theretofore withdrawn by the Commissioner's order of March 30, 1872, hereinbefore referred to, and, in addition, to withhold from sale or entry all the odd-numbered sections and parts of sections, surveyed and unsurveyed, to the extent of fifty miles from said line, and directed that said order should take effect from October 4, 1880; that said order of withdrawal and diagram were received in the said district land office November 30, 1880; that the land hereinbefore described was at the date when the line of said Northern Pacific railroad coterminous therewith was definitely fixed, as aforesaid, and at the date of the making of the said order of withdrawal, to wit, November 13, 1880, and at the date when said order and diagram were received at the United States district land office at Colfax, to wit, November 30, 1880, public land to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, except by virtue of the said withdrawal for the benefit of the said Northern

Pacific Railroad Company, as herein set forth, and it was at all of said times free from pre-emption or other claims or rights, except for the claims and rights of the said railroad company.

That thereafter said Northern Pacific Railroad Company proceeded with the construction of that portion of its said railroad and telegraph line extending on, over, and along said line of definite location so fixed, as aforesaid, and completed the same prior to November, 1881; that thereupon the President of the United States appointed three commissioners to examine said portions of said railroad and telegraph line, and that the said commissioners, having carefully examined the same, on the 4th day of November, 1881, reported that the said portion of the said railroad and telegraph line had been constructed and completed, as required by the said act of Congress approved July 2, 1864, and the said report
6 was duly approved and said railroad and telegraph line accepted by the President of the United States on the 26th day of November, 1881.

VII.

Plaintiffs further aver that prior to the year 1888 the said Northern Pacific Railroad Company definitely fixed the line of its railroad extending from a point on Lake Superior to a point at or near the town of Wallula, in the Territory (now State) of Washington, and extending from a point in the city of Portland, Oregon, to a point near the city of Tacoma, in the Territory (now State) of Washington, and definitely fixed the line of the branch of said railroad extending from a point at or near the town of Pasco, in the Territory (now State) of Washington, to the said city of Tacoma, on Puget's sound, and prior to said year constructed and caused to be constructed and put in operation a continuous line of railroad and telegraph extending on, over, and along the line of definite location of said railroad fixed as aforesaid; that as fast as portions of said railroad and telegraph line equal to or exceeding twenty-five miles in length were so constructed, as aforesaid, they were examined by commissioners appointed by the President of the United States, and by said commissioners were found and reported to have been constructed in good, substantial, and workmanlike manner in all respects as required by said act of Congress; that such reports were accepted and approved by the President of the United States, as provided by said act of Congress approved July 2, 1864; that at the date of fixing the definite location of said railroad and telegraph line certain odd-numbered sections and parts of odd-numbered sections situate opposite to and within the distance of forty miles of said line of definite location in the Territories and within twenty miles of said line in the States had been re-
7 served, sold, granted, or otherwise appropriated by the United States, and pre-emption or other claims or rights had attached thereto; that the area of the lands which were within the place limits (forty miles in the Territories and twenty miles in the States) of said grant and included in odd-numbered sections, which were thus reserved, sold, granted, and other-

wise appropriated, and to which pre-emption and other claims and rights had attached, and which were mineral lands, being the lands in lieu of which said Northern Pacific Railroad Company had a right to select indemnity, amounted to 10,624,746.27 acres; that the area of lands within the first indemnity limits of the said Northern Pacific grant, to wit, coterminous with said line and within the forty and fifty mile limits in the Territories and the twenty and thirty mile limits in the States, which were at the dates of the definite locations of the line of said railroad coterminous therewith, not mineral public lands included in odd-numbered sections and subject to selection by said railroad company, did not exceed 7,177,769.71 acres, and there was not then, nor has there been at any time since, sufficient lands within the limits designated in the act of Congress approved July 2, 1864, subject to the grant to the said Northern Pacific Railroad Company to give to said company the quantity of lands granted to it by the said act of Congress approved July 2, 1864.

VIII.

That on or about December 15, 1883, the said Northern Pacific Railroad Company applied at the United States district land office in the district in which such lands were situate to select and selected the said lots ten, eleven, fourteen, and fifteen, in section one, township 16 north of range 45 east, W. M., Washington, with other lands, as indemnity, in lieu of lands within the place limits of the grant to said company, and which had been reserved, sold, granted,
or otherwise appropriated, or to which pre-emption or other
8 claims or rights were attached at the date when the line of
said Northern Pacific railroad coterminous therewith was definitely fixed by filing a plat thereof in the office of the Commissioner of the General Land Office, being lands in lieu of which the said railroad company was authorized to take other lands by the terms and provisions of the said act of Congress approved July 2, 1864; that said lands were so selected by the said Northern Pacific Railroad Company by filing a list thereof, prepared in the manner and form prescribed in the rules and regulations of the Interior Department, in the United States district land office and tendering and paying to the receiver of the said United States district land office all fees which the said company was by law and by the rules and regulations of the Interior Department required to pay to said receiver upon the selection of lands; that said list was accepted, allowed, and approved by the register and receiver of the said district land office on December 17, 1883, and the said fees so tendered to said register and receiver accepted, and thereafter the said list was transmitted to the office of the Commissioner of the General Land Office for approval; that at the date of the filing of said list and of the acceptance, allowance, and approval of said selection by the said United States district land officers, as aforesaid, the said land hereinbefore described was public land, to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and was free from pre-emption or other claims or rights

except such reservation, appropriation, claim, and rights as had attached thereto in favor of the said Northern Pacific Railroad Company, as hereinbefore set forth.

That thereafter, to wit, on October 26, 1887, the said Northern Pacific Railroad Company, in compliance with other and additional instructions of the said officers of the Interior Department of the United States, filed a certain list designating the losses in lieu of which the said lands described in said selection list filed December 17, 1883, as aforesaid, were selected, which said other and additional instructions were issued and given after said selection had been accepted, allowed, and approved, as aforesaid; that thereafter, to wit, in the years 1892 and 1893, the said Northern Pacific Railroad Company, in compliance with other and additional instructions issued by the officers of the Interior Department of the United States subsequent to the acceptance, allowance, and approval of said selection, made as aforesaid, rearranged said list of losses and said selection list so that the losses for which each tract of land selected by said company had been taken should be specifically designated; that, as appears from said rearranged list, the said lands hereinbefore described were selected in lieu of certain lands included in section seven, township nine north of range fifteen east, W. M., Washington, which said last-described land was located coterminous with and within forty miles of the line of the said Northern Pacific railroad as definitely fixed, and was at the date of the grant to the said Northern Pacific Railroad Company and at the date when the line of said Northern Pacific railroad coterminous therewith was definitely fixed, as aforesaid, included in a reservation of land set apart for the Yakima Indians.

IX.

That after the selection of said land by the said Northern Pacific Railroad Company, to wit, on or about December 24th, 1885, the said Northern Pacific Railroad Company entered into a contract in writing with the plaintiff William L. Powers to convey lots 3, 6, 11, and 14, in said section one, township sixteen north of range forty-five east, upon the payment by said Powers to the said railroad company of the sum of $822.00; that thereafter the said Powers having paid to the said railroad company the said sum, the said railroad company, on or about August 4, 1887, made, executed, and delivered to the said Powers its certain instrument in writing, conveying to the said Powers the said lots last hereinbefore described and all thereof.

That on or about July 30, 1887, the said Northern Pacific Railroad Company made, executed, and delivered its certain instrument in writing to the said plaintiff, William L. Powers, wherein and whereby it conveyed to the said plaintiff lots 2, 7, 10, and 15, in said section one, township sixteen north of range forty-five east, W. M.

X.

That in the year 1877 one A. M. Duffield settled upon lots 2, 3, 6, 7, 10, 11, 14, and 15, in section one, township sixteen north of

range 45 east, W. M., Washington, said lands so settled upon aggregating in area — acres; that shortly thereafter the said Duffield sold and assigned his possessory rights and improvements to one L. M. Rhodes, and thereafter, he, the said Rhodes, having failed to pay for said possessory right and improvements, the said right and improvements were assigned to the said plaintiff, William L. Powers, who settled thereon in 1881, with the expectation and intention of purchasing said lands or a portion thereof from the said railroad company; that soon after such settlement the said Powers offered to purchase lots 2, 7, 10, and 15 from the said railroad company, and at the same time one John G. Powers, a brother of said plaintiff, William L. Powers, offered to purchase lots 3, 6, 11, and 14 from said company; that thereafter the said plaintiff, William L. Powers, purchased the said lands from the said railroad company, as hereinbefore set forth, having prior to said purchase taken a relinquishment from the said John G. Powers of all interest in and to lots 2, 7, 10, and 15.

11 That defendant Slaght, on or about March 1st, 1883, rented and leased said lot ten of and from said William L. Powers, and under and in pursuance of such renting and leasing from said Powers said Slaght was to and did receive and take possession of the said lot ten on or about said date; that plaintiffs allege that in and by said contract said Slaght agreed to and did pay rental to said Powers for the use and occupation of said premises from the date said Slaght received and took possession thereof until on or about the 31st day of October, 1887.

That on October 31, 1887, the said defendant, Slaght, presented an application at the United States district land office for the district in which said land was situate to enter the said described lots 10, 11, 14, and 15, in section 1, township 16 north of range 45 east, W. M., Washington, as public lands of the United States, under the act of Congress approved May 20, 1862, entitled "An act to secure homesteads to actual settlers on the public domain;" that in the said application the said Slaght alleged that he had settled and established his actual residence upon the said lands March 4th, 1883, and that such residence had been thereafter continuous, and that he had built a house on said land and improved the same; but plaintiffs aver that said settlement, occupation, and improvement by Slaght were under and in pursuance of said renting and leasing of and from said Powers as hereinbefore set forth and not otherwise.

See p. 11, Comp.

Plaintiffs further aver that the Northern Pacific Railroad Company, having been notified of the application of said Jacob Slaght to enter said land, filed its objections against the allowance thereof on or about December 2, 1887; that thereupon a hearing was ordered by the United States district land officers for the district in which said land was situate for the purpose of determining the

12 rights of the said railroad company and the said Jacob Slaght in and to the said described land; that thereupon such proceedings were had in said contest that said United States district

land officers, on or about the — day of July, 1889, held that the said land was excepted from the operation of the selection of the said Northern Pacific Railroad Company by reason of the settlement of this plaintiff, William L. Powers, and that the said defendant, Slaght, had settled upon said land as a tenant of said Powers; that thereafter the said Northern Pacific Railroad Company appealed from said decision to the Commissioner of the General Land Office, and such further proceedings were taken and had in said contest that on the 13th day of April, 1895, the said Commissioner of the General Land Office made and rendered his certain decision in said contest in the words and figures following, to wit:

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April* 13, 1895.

JACOB SLAGHT
vs.
NOR. PAC. R. R. CO.

Involving homestead application for lots 10, 11, 14, 15, sec. 1, 16 N., 45 E.

Register & receiver, Walla Walla, Washington.

SIRS: I have considered the contest of Jacob Slaght *vs.* Northern Pacific Railroad Company and William L. Powers, intervenor, involving lots 10, 11, 14, 15, sec. 1, T. 16 N., R. 45 east, the record in which was transmitted with your letter of July 10, 1889, on appeal by Jacob Slaght and said railroad company from your decision in favor of William L. Powers, intervenor.

The land is within the limits of the withdrawal upon the line of the amended general route of said road, the map showing which was filed Feb. 21, 1872, and upon the definite location of the road it fell within the indemnity limits, the order for the withdrawal of which was received at the local office November 30, 1880.

These withdrawals have been held by the department to be without authority of law and of no effect (17 L. D., 8, and 18 L. D., 87).

On December 17, 1883, the company selected the land in question under act of July 2, 1864 (13 Stat., 356), per list No. 1, and on the same day said company selected the land under acts of July 2, 1864 (13 Stat., 356), and May 31, 1870 (16 Stat., 376), for indemnity purposes per amendatory list No. 2.

On October 31, 1887, Jacob Slaght presented an application to make homestead entry for this land and alleged that he settled and established his actual residence thereon March 4, 1883, and the same has been continuous; that he built a house 12 x 14 feet, a kitchen 10 x 12 feet, a stable, dug a cellar and broke a garden spot,
and built a half mile of fence, and that his improvements
13 are worth about $275.00.

The company was duly notified of said application and filed its objections against the acceptance of the same Dec. 2, 1887.

Upon the issuance of notice to the parties in interest a hearing

in the case was had and concluded April 4, 1889, at which all parties were represented.

The testimony adduced at the hearing on behalf of Slaght shows that he established his actual residence on the land in March, 1883; that he broke and planted a garden; that within a few days after moving in the log house on the land he built an addition thereto; that in September, 1883, he built a house 12 x 14 feet, a kitchen, a stable, a chicken-house, dug a cellar, and fenced about 80 acres; that his residence on the above-described tracts of land has been continuous since March 1, 1883, and that his improvements are worth about $400.00, and that he is a qualified settler.

The testimony adduced at the hearing on behalf of the defendants is to the effect that William L. Powers has resided in Palouse city, Whitman county, Washington, and on sec 1, T. 16 N., R. 45 E., for thirteen years; that prior to Slaght's residence on the land in question a part of it was claimed by John D. Powers, a brother of the intervenor; that Slaght went into possession of the land by renting it from the said William L. Powers; that Slaght established himself on the land in 1883 and is still residing thereon; that a portion of this land has been platted as an addition to the town of Palouse city, previous to which Slaght had lived on the land for two years; that Slaght's residence is on lot 10; that when he first settled upon the place he paid a small rental to William L. Powers; that the intervenor has resided upon lot 7, sec. 1, T. 16 N., R. 45 E., since 1881; that he intended to get title to the land involved in this case from the Northern Pacific Railroad Company under its grant of July 2, 1864 (*supra*); that William L. Powers has exhausted all of his rights under the public land laws except his timber-culture right; that in 1877 A. M. Duffield settled upon and laid claim to lots 2, 3, 6, 7, 10, 11, 14, 15, sec. 1, T. 16 N., R. 45 E., who shortly thereafter sold his possessory right and improvements to L. M. Rhodes, taking his (Rhodes') notes for $650, who could not meet the notes, and accordingly he relinquished his rights to William L. Powers, who offered to purchase lots 2, 7, 10, and 15 from said railroad company, and at the same time John G. Powers, a brother of William L. Powers, offered to purchase lots 3, 6, 11, and 14 from said company; that William L. Powers built a log cabin on lot 10 in 1879, plowed and planted about 6 acres to grain, and continued to cultivate it; that in 1885 he cleared lot 10 and part of lot 11, and raised two crops thereon; that in the spring of 1881 he built a house on lot 7 and moved into it in 1881, and has made it his home ever since; that on Sept. 1, 1879, said railroad company mortgaged lots 2, 7, 10, 15, 3, 6, 11, and 14, sec. 1, T. 16 N., R. 45 E., to the Farmers' Loan and Trust Company of New York City on July 13, 1887. Lots 2, 7, 10, and 15 were bargained, sold, and deeded to William L. Powers, and on August 4, 1887, lots 2, 3, 6, 11, and 14 were bargained, sold, and deeded to William L. Powers, and in the settlement William L. Powers took a relinquishment from John G. Powers of all his rights to lots 2, 7, 10, and 15. He (William L. Powers) paid said railroad company $1,249.28 for said eight lots.

You hold that the land in question is excepted from the operation

of the company's selection by reason of the settlement of said William L. Powers, and that the same should be held as public land and subject to his right to purchase under section 5 of the act of March 3, 1887 (24 Stat., 656), or act of January 13, 1881 (21 Stat., 315), and that Slaght settled on the land as the tenant of Powers.

14 The basis for your decision is not well founded:

1st. For the reason that Powers did not apply to purchase the land prior to the passage of the act of March 3, 1887 (*supra*).

2nd. Because no application to purchase under said act of January 13, 1881 (*supra*), has been made within the prescribed time; that he was not qualified to purchase under said act, not having exhausted his timber-culture right, and, besides, such application to purchase shall not cover more than 160 acres; and, again, it appears as an afterthought to secure title to this land under the latter-named act, as the same was purchased from the railroad company in 1887 under the grant of July 2, 1864 (*supra*).

Therefore, in view of this showing, your decision in favor of William L. Powers is hereby reversed, likewise your decision adverse to Jacob Slaght.

Your opinion that said company's selection as to this land was improperly allowed, and that the company had no right to the land prior to its selection, and as the same was occupied and improved as the home of a settler, Slaght's, at the date of selection, that such selection as to the land in question should be cancelled, — in accordance with the uniform practice of the department, and I concur therein.

Accordingly, said amendatory list No. 2 of selections of Dec. 17, 1883, by said company is hereby held for cancellation as to said lots 10, 11, 14, and 15, sec. 1, twp. 16 N., R. 45 E.

The usual time, sixty days after notice, will be allowed the railroad company and William L. Powers within which to appeal to the honorable Secretary of the Interior.

Should this decision become final, Slaght will be permitted to make homestead entry for this land. You will advise him of this action.

At the proper time you will make due report as to the action taken in the premises.

Messrs. Britton & Gray, the resident attorneys of said railroad company, will be advised hereof by this office.

Very respectfully.

(Signed) S. W. LAMOREUX,
Commissioner."

That thereafter the said Northern Pacific Railroad Company appealed from said decision of the Commissioner of the General Land Office to the Secretary of the Interior; that the said Secretary of the Interior, on or about the — day of ——, 1896, affirmed the said decision of the Commissioner of the General Land Office, and thereafter, to wit, on the — day of ——, 1897, the officers of the Interior Department made, executed, and delivered to the said defendant,

Jacob Slaght, letters patent under the great seal of the United States, purporting to convey to the said defendant, Jacob Slaght, the said lots 10, 11, 14, and 15, in section 1, township 16 north of range 45 east, W. M., Washington; but plaintiffs further aver that said letters patent were issued under a misconstruction and misinterpretation of the law; that long prior to the settlement upon said land by the said
15 Jacob Slaght the said lands and each and all thereof had been reserved for the use and benefit of the said Northern Pacific Railroad Company, as hereinbefore set forth; that the plaintiff William L. Powers settled upon said lands with the intention of purchasing the same from the said Northern Pacific Railroad Company; that by reason of the premises the said land was subject to selection by said Northern Pacific Railroad Company at the time the same was selected by said company, as hereinbefore set forth, and that thereby the said Northern Pacific Railroad Company acquired the title in and to said described land, and at the time the said defendant, Jacob Slaght, applied to enter said land, and at the date of the said hearings in said contest hereinbefore set forth, and at the date of the issuance of said letters patent, as aforesaid, the said land was not, nor was it at any of said times, public land subject to settlement or entry under the land laws of the United States other than the said act of Congress approved July 2, 1864, granting lands to the said Northern Pacific Railroad Company, and that the said officers of the Interior Department of the United States were without authority to issue said letters patent purporting to convey the said land to the said defendant, Jacob Slaght, because the said United States had long prior to the issuance of said letters patent parted with the title to the said described lands and each and all thereof to the said Northern Pacific Railroad Company. Plaintiffs further aver that in the rendition of the said decision by the Commissioner of the General Land Office and by the Secretary of the Interior, as hereinbefore set forth, the said officers of the Interior Department misconceived and misconstrued the law, and the same or any part thereof is not the law.

XI.

Plaintiffs further aver that the said plaintiffs, Hattie Dean,
16 Edward Deane, F. S. Bell, Ivan Chase, J. R. Malhern, John K. McCornack, Ann J. Clyde, Spokane & Palouse Railway Company, Spokane & Palouse Land Company, Palouse Mill Company, and A. F. Pugh, assert and claim title to certain portions of the said lands hereinbefore described under and by virtue of certain instruments in writing duly made, executed, and delivered to them by the said plaintiff, William L. Powers, and his grantees, conveying to them, the plaintiffs last above named, certain lots and parcels of the said land hereinbefore described.

XII.

Plaintiffs further aver that the said plaintiff, William L. Powers, has heretofore and by his certain instruments in writing, duly

made, executed, and delivered, conveyed certain other portions of said described land to various parties, and has in said instruments of writing covenanted and agreed to and with the said grantees therein named that he would warrant and defend the title so conveyed to the said grantees.

XIII.

That the questions involved and to be determined in this action are of common and general interest to many persons, and the parties interested herein are so numerous that it is impracticable to bring them before the court.

XIV.

That plaintiffs and said numerous other persons are the owners in fee simple and have an indefeasible title and are in possession of the following-described premises, in the county of Whitman, in the State of Washington, to wit, lots 10, 11, 14, and 15, section 1, in township 16 north of range 45 east of the Willamette meridian, and that said defendant claims an interest or estate therein adverse to the said plaintiffs, which said claim of defendant is without any right whatever, and said defendant has not any estate, right, title, or interest whatever in said land or premises or any part thereof.

17 XV.

That defendant is threatening to commence divers and sundry suits in ejectment, and without suit forcibly to dispossess and eject plaintiffs and said numerous other parties of and from said premises or a portion thereof, and unless enjoined and restrained by an order of this honorable court will so bring said suits, and will also without suit forcibly enter said premises and with force and without any right whatever eject and dispossess plaintiffs and said numerous other parties; that thereby a multiplicity of suits will be caused, and great costs and injuries inflicted upon these plaintiffs and said divers and numerous other parties having a common and general interest with plaintiffs in and to the said premises or some part thereof, and that thereby the courts of this State will be greatly and unnecessarily burdened, and great and irreparable injury will be wrought to these plaintiffs and said numerous other parties having common and general interest in the questions involved herein.

Wherefore plaintiffs pray:

1. That said defendant may be enjoined and restrained from selling or attempting to sell the lands hereinbefore described or any part thereof, and from bringing separate or independent suits against these plaintiffs or against any other person or persons interested in the questions or the premises and property hereinbefore described or any part thereof, and from seeking to eject or dispossess, with or without suit, said plaintiffs or said other persons or any or either of them from said lands or from any part thereof.

2. That a preliminary restraining order and injunction may be issued enjoining and restraining the said defendant, as aforesaid, until the final determination of this suit.

3. That the defendant may be required to set forth the nature of his claim, and that all adverse claims of the defendant may be determined by a decree of this court.

18 4. That by said decree it be declared and adjudged that the defendant has no estate, right, title, or interest whatever in or to said land and premises or any part thereof, and that the title of plaintiffs and said numerous other persons and parties having a common and general interest in and to said premises or a portion thereof be decreed good, valid, indefeasible fee-simple, and free from all claims of said defendant.

5. That defendant be forever enjoined and debarred from asserting any claim whatever in or to said land and premises adverse to plaintiffs and said other parties, and the alleged claims of defendants be cancelled, for naught held, and be decreed null and void, and defendant be required to surrender the same and be required to convey said alleged claims to plaintiffs and said other persons.

6. That the said letters patent issued to the said Jacob Slaght, as aforesaid, may be declared to have been issued under a misconstruction of the law and to be void and to constitute clouds upon the titles of these plaintiffs and of the various persons to whom the said plaintiff, William L. Powers, has conveyed any portion of the said land, as aforesaid.

7. That the said defendant, Jacob Slaght, may be decreed to be a trustee holding such right, title, and interest in and to said lands as he may have acquired under and by virtue of said letters patent, as aforesaid, if any, for the benefit of the said plaintiff, William L. Powers, and his grantee, both direct and through mesne conveyances, and that the said defendant, Jacob Slaght, may be required to convey such right, title, and interest, if any, to the said plaintiff, William L. Powers, and his grantees, as aforesaid.

8. For such other and further relief in the premises as shall to the court seem meet, proper, and agreeable to equity.

9. That plaintiffs may have judgment for their costs and

19 disbursements in this action.

STOLL, STEPHENS, BUNN & MACDONALD,
Attorneys for Plaintiffs.

STATE OF WASHINGTON, } ss:
County of Spokane, }

F. D. Gibbs, being first duly sworn, upon oath deposes and says—That he is an officer of the said plaintiff, Spokane & Palouse Railway Company, to wit, its general agent, located at the city of Spokane, Washington; that said corporation, Spokane & Palouse Railway Company, is one of the plaintiffs in the above-entitled action, and affiant makes this affidavit for and on behalf of said plaintiff; that affiant has heard read the foregoing second amended complaint and knows the contents thereof, and that the same is true, as he verily believes.

F. D. GIBBS.

Subscribed and sworn to before me this 19th day of February, 1898.

[SEAL.] E. T. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

(Copy.)

(Indorsed:) Filed Feb'y 23rd, 1898. C. A. Ross, clerk.

20 In the Superior Court of the State of Washington in and for Whitman County.

WILLIAM L. POWERS, HATTIE DEAN, EDWARD DEAN, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company, a Corporation; Spokane & Palouse Land Company, a Corporation; Palouse Mill Company, a Corporation, and A. F. Pugh, Plaintiffs,

vs.

JACOB SLAGHT.

Comes now the defendant, by his undersigned attorneys, and demurs to plaintiffs' second amended complaint herein for the following reasons, to wit:

1st. That the same does not state facts sufficient to constitute a cause of action against this defendant.

2nd. That there is a defect of parties plaintiff appearing therein.

3rd. That there is a defect of parties defendant appearing therein.

4th. That several causes of action have been improperly united therein.

5th. That the action has not been commenced within the time limited by law.

WYMAN & NEILL AND
W. E. McCROSKEY,
Attorneys for Defendant.

I certify that the foregoing is a true copy of the original demurrer hereby served on you.

CHARLES M. WYMAN.

(Indorsed:) Filed in the office of the clerk of the superior court this 8 day of Aug., 1898. C. A. Ross, clerk.

21 In the Superior Court of the State of Washington for Whitman County.

WILLIAM L. POWERS, HATTIE DEAN, Edward Deane, F. C. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company, a Corporation; Spokane & Palouse Land Company, a Corporation; Palouse Mill Company, a Corporation, and A. F. Pugh, Plaintiffs, *v.* JACOB SLAGHT, Defendant.	Order of Dismissal.

The demurrer of defendant to second amended complaint of plaintiffs herein came on regularly for hearing and determination on the 13th day of June, 1898, and plaintiffs and defendant appearing, by their respective counsel, and after argument, and the court being fully advised in the premises, it was ordered that the said demurrer be, and the same is hereby, sustained.

Whereupon plaintiffs announced that they desire to stand upon their second amended complaint, and decline to further plead. Thereupon defendant moved the court for an order dismissing the action of plaintiffs herein; which motion was granted by the court. Plaintiffs excepted to the order and ruling of the court sustaining said demurrer, also to the ruling and order of the court sustaining a motion of defendant to dismiss the above-entitled action; which objections were, and they are hereby, allowed by the court.

Wherefore it is ordered and adjudged by the court that the above-entitled action be, and the same is hereby, dismissed at plaintiffs' costs, and that defendant do have and recover of and from plaintiffs his costs and disbursements herein taxed at seventeen dollars.

Done in open court this 15th day of June, 1898.

(Signed) WM. McDONALD, *Judge.*

(Copy.)

(Indorsed:) Filed June 17th, 1898. C. A. Ross, clerk.

22 In the Superior Court of the State of Washington for Whitman County.

WILLIAM L. POWERS, HATTIE DEAN, EDWARD Deane, F. C. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company, a Corporation; Spokane & Palouse Land Company, a Corporation: Palouse Mill Company, a Corporation, and A. F. Pugh, Plaintiffs,
v.
JACOB SLAGHT, Defendant.
} Notice of Appeal.

To the above-named defendant, Jacob Slaght, and to Wyman & Neill and W. F. McCroskey, your attorneys:

You and each of you are hereby notified that the above-named plaintiffs do hereby appeal to the supreme court of the State of Washington from that certain order and final judgment rendered and entered herein on the 15th day of June, 1898, which order and judgment is in favor of defendant and against plaintiffs, and which said order and final judgment is one sustaining the demurrer of the defendant to plaintiffs' second amended complaint and dismissing the action of plaintiffs herein and judgment for costs in favor of defendant and against plaintiffs, and from the whole and every part of said order and final judgment.

Dated this 21st day of June, 1898.

STOLL, STEPHENS, BUNN & MACDONALD,
Attorneys for Plaintiffs.

(Indorsed:) Due service of within notice of appeal by receipt of a true copy thereof admitted this 24th day of June, 1898. Wyman & Neill & W. E. McCroskey, attorneys for defendant. Filed June 24, 1898. C. A. Ross, clerk, by Walter Ruble, deputy clerk.

23 In the Superior Court of the State of Washington for Whitman County.

WILLIAM L. POWERS, HATTIE DEAN, EDWARD Deane, F. C. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company, a Corporation; Spokane & Palouse Land Company, a Corporation; Palouse Mill Company, a Corporation, and A. F. Pugh, Plaintiffs,
v.
JACOB SLAGHT, Defendant.
} Bond on Appeal.

Know all men by these presents that the undersigned, for and on behalf of each and all the above-named plaintiffs, does hereby bind himself, his heirs, executors, administrators, and assigns, unto

the above-named defendant, Jacob Slaght, in the sum of two hundred dollars ($200).

The condition of the above obligation is such that whereas the above-named plaintiffs have appealed to the supreme court of the State of Washington from that certain order and final judgment made and entered in the above entitled action on the 15th day of June, 1898, which said order and final judgment is in favor of defendant and against said plaintiffs:

Now, therefore, if the said plaintiffs (appellants) shall and will pay all costs and damages that may be awarded against them or either of them on the said appeal or on the dismissal thereof, not exceeding two hundred dollars, then and in that event this obligation to become null and void; otherwise to be and remain in full force and effect.

Dated this 21st day of June, 1898.

F. H. MASON. [SEAL.]

(Copy.)

24 STATE OF WASHINGTON, } ss:
County of Spokane, }

F. H. Mason, being first duly sworn, upon oath deposes and says:

That he is the party who made and executed the above and foregoing bond for and on behalf of the above-named plaintiffs and for the purpose of effecting and perfecting an appeal in the above-entitled action; that he is a resident of the county of Spokane, State of Washington, and is worth the sum of two hundred dollars over and above all debts and liabilities in separate property within the State of Washington, exclusive of property exempt from execution.

F. H. MASON.

Subscribed and sworn to before me this 21st day of June, 1898.

E. T. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

(Indorsed:) Due service of within bond on appeal, by receipt of a true copy thereof, admitted this 24th day of June, 1898. Wyman & McNeill & W. E. McCroskey, attorney- for defendant. Filed June 24, 1898. C. A. Ross, clerk, by Walter Ruble, deputy.

25 STATE OF WASHINGTON, } ss:
County of Whitman, }

I, C. A. Ross, clerk of the superior court of said county and State, do hereby certify that the foregoing is a true, full, and correct transcript of so much of the records and files in the above-entitled cause as I have been directed by the appellant to transmit to the supreme court.

In testimony whereof I have hereunto set my hand and seal of said superior court this 18th day of August, A. D. 1898.

[SEAL.] C. A. ROSS, *Clerk*,
By WALTER RUBLE, *Deputy*.

(Revenue stamp.)

(Indorsed:) Filed Aug. 22, 1898. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

26 WILLIAM L. POWERS ET AL., Appellants, *vs.* JACOB SLAGHT, Respondent. } No. 3042. Filed Dec. 5th, 1898.

Per Curiam:

This case falls within the rule of Moore *vs.* Cormode, and is accordingly affirmed.

27 In the Supreme Court, State of Washington.

SATURDAY, *January 14th*, 1899.

WILLIAM L. POWERS ET AL., Appellants, *vs.* JACOB SLAGHT, Respondent. } No. 3042. Judgment.

This cause having been heretofore submitted to the court on the transcript of the record in the superior court of Whitman county, and upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises and having filed its opinion in writing, it is now, on this 14th day of January, A. D. 1899, on motion of Wyman & Neill, of counsel for respondent, considered, adjudged, and decreed that the judgment of the said superior court be, and the same is hereby, affirmed, with costs, and that the said Jacob Slaght have and recover of and from the said William L. Powers *et al.* and from F. H. Mason, surety, the costs of this action, taxed and allowed at eighty-eight and $\frac{75}{100}$ dollars, and that execution issue therefor; and it is further ordered that this cause be remitted to the said superior court for further proceedings in accordance with the opinion herein filed.

28 STATE OF WASHINGTON:

In the Supreme Court.

WILLIAM L. POWERS, HATTIE DEAN, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a Corporation), Spokane & Palouse Land Company (a Corporation), Palouse Mill Company (a Corporation), and A. F. Pugh, Plaintiffs in Error, vs. JACOB SLAGHT, Defendant in Error.	Assignments of Error.

Now comes the above-named plaintiffs in error, William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, by C. W. Bunn, James B. Kerr, and H. M. Stephens, their attorneys, and assign the following errors in the judgment of this court herein:

I.

The court erred in its judgment that the complaint of the plaintiffs in error be dismissed.

II.

The court erred in its judgment sustaining the demurrer of the defendant in error to the complaint of the plaintiffs in error herein.

III.

The court erred in its judgment wherein and whereby it decided that the plaintiffs in error were not the owners of the land in controversy.

IV.

The court erred in its judgment wherein and whereby it decided that the plaintiffs in error were not entitled to judgment
29 canceling the patent of the defendant in error and adjudging plaintiffs in error to be the owners of the premises in controversy.

V.

The court erred in its judgment wherein and whereby it decided that the patent of the United States issued to the defendant in error conveyed to him the legal and equitable title to the premises in controversy.

VI.

The court erred in failing to hold and decide that the plaintiffs in error were the owners and entitled to the possession of the

premises in controversy under and by virtue of the conveyance to said plaintiffs in error from the Northern Pacific Railroad Company.

VII.

The court erred in failing to hold and decide that the Northern Pacific Railroad Company became the owner of the premises in controversy by virtue of the act of Congress approved July 2, 1864, granting lands to aid in the construction of the Northern Pacific railroad.

VIII.

The court erred in failing to hold that the Northern Pacific Railroad Company became the owner of the premises in controversy by virtue of its selection thereof under said act of Congress of July 2, 1864.

IX.

The court erred in failing to hold and decide that the premises in controversy were public land of the United States, free from preemption or other claims or rights and subject to the grant to said Northern Pacific Railroad Company under said act of Congress of July 2, 1864, at the date of selection, to wit, December 17th, 1883.

30 X.

The court erred in failing to hold that the selection of the premises in controversy by the Northern Pacific Railroad Company on December 17th, 1883, was in compliance with said act of July 2, 1864, and the directions of the Secretary of the Interior, and operated to appropriate said premises to said Northern Pacific Railroad Company under said grant.

XI.

The court erred in holding and deciding that the occupancy of the premises in controversy by the defendant in error on the date of the selection thereof by the Northern Pacific Railroad Company constituted such a claim thereto as prevented the attachment of the grant to said Northern Pacific Railroad Company upon selection.

XII.

The court erred in failing to hold and decide that the premises in controversy were appropriated to and passed to the Northern Pacific Railroad Company upon the definite location of its road under said act of July 2, 1864, for the reason that all of the lands in the indemnity limits were insufficient to satisfy the losses from the place limits of its said grant.

XIII.

The court erred in failing to hold and decide that the premises in controversy were withdrawn from sale, homestead and pre emption entry by virtue of the provisions of said act of July 2, 1864, from

and after February 21, 1872, when the general route of said Northern Pacific railroad was fixed.

XIV.

The court erred in failing to hold and decide that the premises in controversy were withdrawn from sale, homestead and pre-emption entry by virtue of the provisions of said act of July 2, 1864, from and after October 4, 1880, when the line of said Northern Pacific railroad was definitely located.

31

XV.

The court erred in failing to hold and decide that the premises in controversy were withdrawn from sale, homestead and pre-emption entry from and after November 13, 1880, by virtue of the withdrawal thereof by the Commissioner of the General Land Office.

XVI.

The court erred in failing to hold and decide that the Land Department of the United States committed an error of law in awarding the premises in controversy to the defendant in error, and allowing homestead entry thereof, and in cancelling the selection of the Northern Pacific Railroad Company.

XVII.

The court erred in holding that the patent issued to the defendant in error concluded and determined the rights of the parties herein.

WILLIAM L. POWERS,
HATTIE DEAN,
EDWARD DEANE,
F. S. BELL,
IVAN CHASE,
JOHN K. McCORNACK,
ANN J. CLYDE,
SPOKANE & PALOUSE RAILWAY COMPANY (A CORPORATION),
SPOKANE & PALOUSE LAND COMPANY (A CORPORATION),
PALOUSE MILL COMPANY (A CORPORATION),
A. F. PUGH, *Defendants in Error,*
By C. W. BUNN,
JAMES B. KERR,
H. M. STEPHENS, *Their Attorneys.*

Dated February 23rd, 1899.

(Indorsed:) Filed Mar. 2, 1889. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

32 STATE OF WASHINGTON:

In the Supreme Court.

WILLIAM L. POWERS, HATTIE DEAN, EDWARD DEANE, F. S. BELL, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a Corporation), Spokane & Palouse Land Company (a Corporation), Palouse Mill Company (a Corporation), and A. F. Pugh, Plaintiffs in Error,

vs.

JACOB SLAGHT, Defendant in Error.

Now come the above-named William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, plaintiffs in error, and pray that a writ of error in the above-entitled cause may issue to the said supreme court of the State of Washington to review a certain judgment entered in said court on the 14th day of January, 1899, in favor of said Jacob Slaght, defendant in error, and against the said William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, plaintiffs in error, and dismissing the complaint of the plaintiffs in error, William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, for the reason that manifest error hath intervened in the rendition of said judgment of said supreme court of Washington, to the great damage of said plaintiffs in error; all of which will more in detail appear from the assignment of errors
33 which is filed with this petition.

WILLIAM L. POWERS,
HATTIE DEAN,
EDWARD DEANE,
F. S. BELL,
IVAN CHASE,
JOHN K. McCORNACK,
ANN J. CLYDE,
SPOKANE & PALOUSE RAILWAY COMPANY (A CORPORATION),
SPOKANE & PALOUSE LAND COMPANY (A CORPORATION),
PALOUSE MILL COMPANY (A CORPORATION),
A. F. PUGH, *Plaintiffs in Error,*
By C. W. BUNN,
JAMES B. KERR,
H. M. STEPHENS, *Their Attorneys.*

Dated Feb'y 23rd, 1899.

(Indorsed:) Filed Mar. 2, 1899. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

34 Know all men by these presents that we, Howell W. Peel and R. L. Rutter, of the city of Spokane, county of Spokane, State of Washington, are firmly bound unto Jacob Slaght, of the county of Garfield, in the State of Washington, in the full and just sum of two hundred and fifty (250) dollars, to be paid to the said Jacob Slaght, his heirs, representatives, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, in the supreme court of the State of Washington, in a suit pending in said court between William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, plaintiffs, and Jacob Slaght, defendant, judgment was rendered against the said plaintiffs, William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, and the said plaintiffs having obtained a writ of error and filed a copy thereof in the office of the clerk of said court to reverse the judgment in the aforesaid cause, and the citation directed to the said Jacob Slaght, defendant, citing and admonishing him to be and appear at the Supreme Court of the United States, at Washington, in the District of Columbia, on or before the first day of May, 1899:

Now, the condition of the above obligation is such that if
35 the said William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh shall prosecute said writ of error to effect and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

HOWELL W. PEEL. [SEAL.]
R. L. RUTTER. [SEAL.]

Sealed and delivered in presence of—

E. T. WHITE.
H. M. STEPHENS.

STATE OF WASHINGTON, } ss.:
County of Spokane, }

Howell W. Peel and R. L. Rutter, being first duly sworn, each for himself, and not one for the other, deposes and says that he is one of the parties who made and executed the above and foregoing bond for and on behalf of William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, plaintiffs in error in the cause mentioned therein, and for the purpose of effecting and perfecting a writ of error therein; that he is a resident of the county of Spokane, State of Washington, and is worth the sum of two hundred and fifty (250) dollars over and above all debts and liabilities, in separate property within the State of Washington, exclusive of property exempt from execution.

HOWELL W. PEEL.
R. L. RUTTER.

Subscribed and sworn to before me this 24th day of February, 1899.

E. T. WHITE,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Spokane, Washington.*

36 The foregoing bond is approved as to form and sufficiency.

MERRITT J. GORDON,
Chief Justice of the Supreme Court of Washington.

(Indorsed:) Filed Mar. 2, 1899. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

37 UNITED STATES OF AMERICA:

The President of the United States to the honorable supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in a suit between William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, plaintiffs, and Jacob Slaght, defendant, wherein was drawn in question the validity of a statute or an authority exercised under the United States and the decision was against its validity, a manifest error hath intervened, to the great damage of the said William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J.

Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh, as by their complaint appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington, on the District of Columbia, within sixty days from the date hereof that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what
of right and according to the laws and customs of the
38 United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 2nd day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal United States Circuit Court, District of Washington.]

A. REEVES AYRES,
Clerk of the Circuit Court of the United States
for the District of Washington.

The above writ is hereby allowed.

MERRITT J. GORDON,
Chief Justice of Supreme Court of Washington.

39 [Endorsed:] 3042. State of Washington. In supreme court. William L. Powers *et al.*, plaintiffs in error, *vs.* Jacob Slaght, defendant in error. Writ of error. Filed March 3, 1899. C. S. Reinhart, clerk, by R. B. Crandall, deputy. C. W. Bunn, James B. Kerr, H. M. Stephens, attorneys for plaintiffs in error.

40 United States of America to Jacob Slaght, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, in the District of Columbia, within sixty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Washington, wherein William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern, Spokane & Palouse Railway Company (a corporation), Spokane & Palouse Land Company (a corporation), Palouse Mill Company (a corporation), and A. F. Pugh were plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ mentioned, should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Merritt J. Gordon, chief justice of the supreme court of the State of Washington, this second day of March,

in the year of our Lord one thousand eight hundred and ninety-nine.

MERRITT J. GORDON,
Chief Justice of the Supreme Court of Washington.

41 *Sheriff's Return of Service.*

Case No. —.

STATE OF WASHINGTON, } ss:
County of Whitman, }

I, Joseph Canutt, sheriff in and for said county and State, do hereby certify that I served the within citation on Wyman & Neill, attorneys for the within-named defendant, in Whitman county, State of Washington, on the 8th day of March, 1899, by delivering to and leaving with Thomas Neill, one of attorneys for said defendant, personally a true copy of said citation, certified to be such true copy by affiant.

Returned this 8th day of March, 1899.

JOSEPH CANUTT,
Sheriff of Whitman County, Washington,
By —— ——, *Deputy.*

Sheriff's Fees.

Copying	$
Service	
Mileage	
	$ .80

Subscribed and sworn to before me this 8 day of March, 1899.

[Seal of Auditor of Whitman County, State of Washington.]

W. B. HARGRAVE,
Deputy Auditor Whitman County, Washington.

42 *Sheriff's Return of Service.*

Case No. —.

STATE OF WASHINGTON, } ss:
County of Whitman, }

I, Joseph Canutt, sheriff in and for said county and State, do hereby certify that I served the within citation on Jacob Slaght, the within-named defendant, in Whitman county, State of Washington, on the 8th day of March, 1899, by delivering to and leaving with Jacob Slaght, the said defendant, personally a true copy of said citation, certified to be such true copy by affiant.

Returned this 8th day of March, 1899.

JOSEPH CANUTT,
Sheriff of Whitman County, Washington,
By G. B. CARTER, *Deputy.*

Sheriff's Fees.

Copying	
Service	.60
Mileage	5.40
	$6.00

Subscribed and sworn to before me this 9 day of March, 1899.

[Seal of Auditor of Whitman County, State of Washington.]

W. B. HARGRAVE,
Deputy Auditor of Whitman County, Washington.

43 [Endorsed:] 3042. State of Washington. In supreme court. William L. Powers *et al.*, plaintiffs in error, *vs.* Jacob Slaght, defendant in error. Citation. C. W. Bunn, James B. Kerr, H. M. Stephens, attorneys for plaintiffs in error. Filed Mar. 13, 1899. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

44 In the Supreme Court, State of Washington.

William L. Powers, Hattie Dean, Edward Deane, F. S. Bell, Ivan Chase, John K. McCornack, Ann J. Clyde, J. R. Malhern; Spokane & Palouse Railway Company, a Corporation; Spokane & Palouse Land Company, a Corporation; Palouse Mill Company, a Corporation, and A. F. Pugh, Plaintiffs, *v.* Jacob Slaght, Defendant.	Certificate Clerk of Supreme Court.

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full, true, and correct transcript of the record in the above-entitled cause, and that in pursuance of the writ of error filed herein I now transmit the same, together with the original writ of error, the original citation, and a copy of the bond on appeal and of the assignment of errors, to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 14th day of April, 1899.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

[Ten-cent U. S. internal-revenue stamp.]

Endorsed on cover: File No., 17,393. Washington supreme court. Term No., 283. William L. Powers, Hattie Dean, Edward Deane, *et al.*, plaintiffs in error, *vs.* Jacob Slaght. Filed May 4th, 1899.